

Opinion No. 16-1738

February 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. H. B. Albertson, Mills, New Mexico.

Calling and holding of local option elections.

OPINION

{*309} I have just received your letter of yesterday relative to an attempt to prohibit the sale of intoxicating liquors in your town. I see from what you write now, that there is a practical obstacle to your calling any effective local option election as a part of the territory within which you wish the business prohibited, is within the district covered by the local option election at Roy. Section 2935 of the Codification provides that the question of prohibition, affecting any territory included in any such petition, shall not again be submitted for four years from the date of the election. I do not see how it would be possible for you now to have any such election as to any part of the territory included in the former election when it was voted wet.

I would suggest that you might incorporate your town and then, by ordinance, regulate or prohibit the sale of liquors but the statute of 1909, which provides for the incorporation of villages does not give such villages any control over the liquor business. It was no improvement over the then existing statute providing for such municipal corporations, and I never discovered any reason for its enactment unless it was for the purpose of excluding control of the liquor business from the powers of villages.

Under these circumstances I do not see that our statutes provide any remedy for the conditions about which you complain, unless you can invoke the authority given to the county commissioners to revoke liquor licenses for reasons set out in Section 2893 of the Codification. If the saloon or saloons of which you complain are disorderly or ill-governed places, the county commissioners have power to revoke the licenses.

My own opinion is that the best practical method of regulating the retail liquor business would be by putting control of it in the hands of a central state commission of not more than three members, who should be neither prohibitionists nor liquor men, with full and absolute power to issue or revoke licenses. They should have authority to determine, in the first instance, whether any applicant is a fit person to be given a license, and whether the place where {*310} he proposed to conduct the business was a proper place or not, with no chance of appeal from the decision of the board or any review of its action by any court. Local county or municipal officers ought not to have anything to do with the issuing or revoking of licenses, although municipalities of all kinds ought to have authority to impose additional licenses or to prohibit the business within their limits.

I have tried to secure legislation of this kind for the last seven years, but without success, finding opposition not only from the liquor interests, but also from the prohibitionists, represented by the anti-saloon league. The prohibitionists seem to take the position that they would rather not have any legislation which would mitigate or reduce the evils of the saloon business as that might stand in the way of their securing entire prohibition.